



Industrial Telecommunications Association, Inc.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 20, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Alliance of Private 800/900 MHz Licensees;
Petition for Rule Making to Conform the Rules
Pertaining to Loading Standards, Reporting
Requirements and Construction of 800/900 MHz
Private Mobile Radio Service Systems

Dear Mr. Caton:

On behalf of the Alliance of Private 800/900 MHz Licensees (APEL), please accept for filing the enclosed Petition for Rule Making.

This Petition for Rule Making requests certain amendments to Subpart S of Part 90 of the Commission's Rules to modify the loading standards, reporting requirements and construction standards for 800/900 MHz private land mobile radio systems.

If you should have any questions regarding this Petition, kindly contact the undersigned.

Cordially,

Frederick J. Day

Frederick J. Day
Executive Director
Government Relations

Enclosure

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Formerly ~~SIRSA~~ the Special Industrial Radio Service Association, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Part 90) RM-
of the Commission's Rules)
To Conform the Rules)
Pertaining to Loading)
Standards, Reporting)
Requirements and)
Construction of 800/900)
Private Mobile Radio)
Service Systems)

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To: The Commission

PETITION FOR RULE MAKING
OF THE
THE ALLIANCE OF PRIVATE 800/900 MHz LICENSEES

The Alliance of Private 800/900 MHz Licensees ("APEL"), pursuant to Section 1.401 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby respectfully submits this Petition for Rule Making seeking to make appropriate changes to the mobile loading, reporting and construction requirements applicable to systems licensed in the Private Land Mobile Radio Services ("PLMRS").

I. Preliminary Statement

1. The Alliance of Private 800/900 MHz Licensees (APEL) is an independent membership market council of the Industrial Telecommunications Association, Inc. APEL was formed to provide an instrumentality through which licensees of private user trunked and

conventional systems may coordinate efforts to sustain the viability of 800/900 MHz spectrum set aside for private, non-commercial radio systems.

2. The membership of APEL consists of representatives from a number of Fortune 500 companies and other prominent corporations, including:

Airborne Express
All American Pipeline Company
Bell Communications Research
BellSouth Telecommunications
The Boeing Company
Exxon Communications Services Company
Ford Communications, Inc.
Kerr-McGee Corporation
Pacific Bell, and
Phillips Petroleum Company.

3. This Petition for Rule Making examines appropriate changes to the mobile loading, construction and reporting requirements applicable to systems licensed in the Private Land Mobile Radio Services. The proposed changes are motivated by the recent deregulatory actions adopted by the Commission in GN Docket No. 93-252¹ as well as other factors that suggest it is now appropriate to modify the loading, construction and reporting requirements for private, internal-use systems.

¹ *In re* Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, GN Docket No. 93-252, adopted August 9, 1994, 59 Fed. Reg. 59,945 (November 21, 1994).

II. Mobile Loading Requirement

4. Until 1988, the Commission relied heavily on the use of mobile loading standards as a means of ensuring that the channels assigned to private land mobile licensees above 800 MHz were fully utilized. In the Commission's view, loading standards served "a number of very useful functions in helping to regulate the SMR industry and the use of the 800 MHz band in general."² By 1988, however, the Commission concluded that the loading standards had served their purpose and were no longer necessary as a device for ensuring the efficient use of licensed channels. Accordingly, the Commission decided, in the interest of "minimal government intrusion," to eliminate the channel loading requirement.³

5. Beginning with its *Report and Order* in PR Docket No. 86-404, the Commission began the process of phasing out the use of mobile loading standards as a device for recovering channels that were not fully loaded.⁴ The Commission determined that it was appropriate to phase out the channel loading requirement for SMRs as well as industrial, business, public safety and land transportation systems using the 800 MHz band. Under the decision adopted in Docket No. 86-404, the Commission exempted all 800 MHz

² *In re* Amendment of Part 90, Subparts M and S, of the Commission's Rules, *Report and Order*, PR Docket No. 86-404, 3 FCC Rcd. 1838, 1845 (1988).

³ *Id.* at 1846.

⁴ *Id.* at 1846.

systems licensed on or after June 1, 1993 from the channel loading requirement. The Commission settled on a transition plan of this nature "to allow for business planning and to avoid shock to the market that an abrupt change might cause."⁵

6. More recently, the FCC has decided to exempt SMR systems licensed before June 1, 1993 from the channel loading requirement.⁶ Under current rules, therefore, the channel loading requirement originally established for trunked 800 MHz systems now applies only to industrial, business, public safety and land transportation systems licensed before June 1, 1993 that are still within their initial license term.⁷

7. For many of the same reasons that caused the Commission to phase out the loading standards in 1988 and, earlier this year, to exempt all SMR systems from the loading standards, the members of APEL believe it is appropriate and useful to cease applying the loading standards to non-SMR systems licensed before June 1, 1993. There no longer is a need to avoid "market shock" and the loading standards clearly are no longer necessary for business planning purposes.

⁵ *Id.*

⁶ *Third Report and Order*, GN Docket No. 93-252, paragraph 193.

⁷ 47 C.F.R. § 90.631(b) (1994).

8. Moreover, the June 1, 1993 cut-off date is, in itself, arbitrary. It does not stand to reason that the loading standards would serve a useful purpose for systems licensed before June 1, 1993 but not for systems licensed after that date. For this reason, APEL urges the Commission to amend Part 90 of the rules to exempt all private land mobile radio systems licensed in the 800/900 MHz bands from the channel loading requirement. For the same reasons, the petitioner also suggests that the Commission remove the channel loading requirement for SMR systems licensed at 900 MHz that were the beneficiaries of a two-year extension of the loading date.⁸ APEL does believe, however, that channel loading counts provide a useful guide for determining when licensed systems qualify for additional channels.

III. Mobile Loading Reporting Requirement

9. The current Section 90.651(b) requires each licensee of a trunked non-SMR system licensed at 800/900 MHz to file a report once each year with the Commission regarding the number of mobile units served on its systems. A similar report is due when the licensee files an application to renew the station license.

10. APEL does not believe that these reports serve a valid governmental purpose. As noted above, the mobile loading requirement is being phased out. In the current environment, the

⁸ See 47 C.F.R. § 90.631(i) (1993).

annual reporting requirement would seem to be an unnecessary measure. Should the Commission ever need to know the number of mobile units served by a specific system, it possesses the authority under the Communications Act to require licensees to provide the desired information. Accordingly, APEL asks the Commission to eliminate the annual reporting requirement as well as the report required at the time of license renewal. The proposed rule changes presented in the Appendix have been drafted to accomplish this result.

IV. Conventional Station Construction Period

11. Under current rules, trunked systems must be constructed and placed in operation within one year.⁹ Conventional systems, on the other hand, must be constructed and placed in operation within eight months.¹⁰ For the reasons discussed below, the members of APEL believe that, in the current environment, there is merit in conforming the construction periods for both trunked and conventional systems.

12. With the implementation of the CMRS regulations, most conventional systems that offer a communications service to subscribers will be regulated under the CMRS rules. The vast majority of conventional systems that continue to be regulated

⁹ 47 C.F.R. § 90.631(e) and (f) (1993).

¹⁰ 47 C.F.R. § 90.633(c) (1993).

under the private radio regulatory structure will be devoted to internal business communications, rather than subscriber-based communications. One of the traditional features of internal-use systems is that entities typically do not apply for such systems unless and until they really need the systems to fulfill their own communications requirements. Consequently, from a regulatory perspective, there is less need to enact measures to ensure prompt implementation of licensed systems. For this reason, allowing one year for the construction of conventional systems, as proposed in the draft rules submitted with this Petition, will not introduce any significant degree of inefficiency in the use of the licensed frequencies.

13. Adopting a one-year construction period for conventional systems would have the benefit of eliminating the need for licensees to request extension of the construction period in those cases where the construction process does require more than eight months. This would relieve a burden on both the Commission and affected licensees. Finally, there is a benefit in conforming the construction periods for conventional and trunked systems as a means of simplifying the presently diverse regulatory requirements. Establishing a standard one-year construction period for both conventional and trunked systems at 800/900 MHz would make it easier for licensees to comply with the construction requirement.

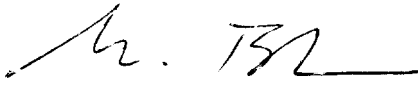
V. Conclusion

14. For the reasons discussed above, APEL believes it is in the public interest to eliminate the mobile loading requirement for all industrial, business, public safety and land transportation systems. The petitioner also urges the Commission to eliminate the mobile loading reporting requirement currently applicable to non-SMR trunked systems. Finally, for purposes of uniformity and simplicity, the members of APEL ask the Commission to institute a standard one-year construction period for all 800/900 MHz systems, conventional as well as trunked. The petitioner believes the proposed changes will stimulate the future growth and maturity of the industry and eliminate the regulatory burden imposed by rules that are no longer necessary.

WHEREFORE, THE PREMISES CONSIDERED, the Alliance of Private 800/900 MHz Licensees respectfully submits this Petition for Rule Making and urges the Federal Communications Commission to place the Petition for Rule Making on Public Notice in accordance with Section 1.403 of the Commission's Rules and Regulations.

**ALLIANCE OF PRIVATE 800/900 MHz
LICENSEES**

By:



Spencer Bahner
Chairman

Prepared by:

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Date: December 15, 1994

Appendix: Text of Proposed Rule Changes

APPENDIX

It is requested that the Federal Communications Commission amend Part 90 of its Rules and Regulations as shown:

I. Section 90.631 is amended by deleting existing subsections (b) and (i), as indicated:

§ 90.631 Trunked Systems Loading, Construction and Authorization Requirements.

* * * * *

(b) [RESERVED]

* * * * *

(i) [RESERVED]

II. Section 90.633 is amended by revising existing subsections (c) and (d) to read as follows:

§ 90.633 Conventional Systems Loading Requirements.

* * * * *

(c) Except as provided in § 90.629, licensees of conventional systems must place their authorized stations in operation not later than one year after the date of grant of the license for the system.

(d) If a station is not placed in operation within one year, except as provided in § 90.629, the license cancels automatically and must be returned to the Commission. For purposes of this section, a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation.

* * * * *

III. Section 90.651 is amended by deleting existing subsection (b), as indicated:

**§ 90.651 Supplemental Reports Required Of Licensees
Authorized Under This Subpart.**

* * * * *

(b) [RESERVED]

* * * * *

IV. Section 90.658 is amended by revising the caption and subsection (a) as indicated:

**§ 90.658 Loading Data Required for Base Station Licensees of
Trunked Specialized Mobile Radio Systems to Acquire
Additional Channels.**

(a) A base station licensee of a trunked Specialized Mobile Radio system that applies for additional channels to expand an existing system must identify on the appropriate application form the number of mobiles and control stations loaded on its system as calculated in paragraph (b) of this section.

* * * * *